

Executive Branch Ethics Commission
ADVISORY OPINION 07-19
June 29, 2007

RE: Review of Nepotism under the Executive Branch Code of Ethics
(Amends Advisory Opinion 04-34)

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the June 29, 2007 meeting of the Commission and the following opinion is issued.

In previously issued Advisory Opinion 04-34 (a copy of which is enclosed), the Commission clarified that based on KRS 11A.020(1)(a), (c), and (d), public servants are prohibited from advocating or influencing in any way the employment, appointment, promotion, transfer or advancement of a family member to an executive branch position the public servant directly supervises or manages. Employees are barred from interviewing, recommending, approving, supervising or evaluating the job performance of a family member in most circumstances. "Family" is defined in KRS 11A.010(4):

(4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

KRS 11A.020(1) provides:

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

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(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

The Commission has become aware since the issuance of Advisory Opinion 04-34 of the hardship that this opinion may inflict upon many public servants who have faithfully served the Commonwealth for many years under the direct supervision of a family member. Although such supervisory arrangements present a potential conflict of interest for supervisors of such employees, the Commission believes that the need to be fair to such **employees who were in employment situations prior to the issuance of Advisory Opinion 04-34** serves to allow such employees to remain in their positions under the supervision of a family member provided the family member takes action to remove as much potential for conflict as possible. For example, management should place a layer of supervision between any supervisor and a family member so that, if possible, a public servant does not directly supervise or evaluate a family member. Moreover, a public servant who continues to directly supervise a family member should ascertain that any action he takes regarding the family member is fair and impartial, and he should not take any action to promote or change the employee's position (i.e. part-time to full-time). Any use by a public servant of his position to give a family member an unfair advantage will be investigated and appropriate enforcement action under the ethics code will be taken by the Commission.

Since the date of the issuance of Advisory Opinion 04-34, on September 30, 2004, public servants should not have been involved in the employment or supervision of family members. No employees should have been appointed after September 30, 2004 to work for and be supervised by a family member. After that date any public servants who have used their positions to give an advantage in the employment or promotion of a family member may be in violation of the executive branch code of ethics.

Further, the Commission wishes to address conflict situations that can occur when a public servant is elected, appointed or promoted to a supervisory position directly over a family member. First, the Commission advises management to be aware of potential conflict situations that may occur with family members in considering appointments or promotions of staff. An employee's appointment or advancement should not be penalized just because it would put him in a conflict situation, but management should consider viable options in appointing, promoting or transferring individuals so that potential conflicts will not exist.

Secondly, public servants who are elected to their positions, such as constitutional officers and property valuation administrators, may find themselves elected to supervisory situations that pose a conflict for them if a family member prior to the election already was employed in the office that serves the position to which they were elected. In these

circumstances, the previously employed family members may retain their positions, but again, a public servant who continues to directly supervise a family member should ascertain that any

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action he takes regarding the family member be fair and impartial. Any use by a public servant of his position to give a family member an unfair advantage may be a violation of the executive branch code of ethics.

Advisory Opinion 06-14 (a copy of which is enclosed) also prohibits an employee from directly hiring, supervising, evaluating, or disciplining another employee when the two employees share a household and a close family-like relationship exists that will allow the supervising employee to benefit from any financial gain of the employee he is supervising. Thus, the above guidance also applies to situations where two employees share a household and a close family-like relationship exists.

The Commission encourages state agencies which have a history of nepotism in the past to adopt in-house policies further addressing the hiring of family members.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb

Enclosures: Advisory Opinion 04-34
Advisory Opinion 06-14